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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21

22 LARRY G. PHILPOT,

23 Plaintiff,

24 v.
25

26 METABRAINZ Foundation, Inc.

27 Defendant.
28

CASE NO. 2:18-cv-6620 PA (AGRx)

**JOINT REPORT REGARDING
DISCOVERY DISPUTE**

Discovery Cutoff: May 6, 2019
Pretrial Conference: June 21, 2019
Trial Date: July 16, 2019

1 Defendant MetaBrainz Foundation, Inc. (“Defendant” or “MetaBrainz”) and
2 Plaintiff Larry G. Philpot (“Plaintiff”) (collectively, the “Parties”), having conferred
3 telephonically pursuant to Local Rule 37-1 in a good faith effort to resolve these
4 discovery disputes, respectfully submit this Joint Agenda for the Telephonic
5 Discovery Conference that Defendant requested on February 11, 2019. The Court
6 scheduled the Telephonic Discovery Conference to take place February 19, 2019 at
7 10:00 am.

8 MetaBrainz served on Plaintiff its first sets of requests for production
9 interrogatories on December 5, 2018. Plaintiff served its objections and responses
10 on January 11, 2019. Expert reports are due on March 11, 2019, and the discovery
11 cutoff is May 6, 2019.

12 MetaBrainz intends to address the following issues pertaining to Plaintiff’s
13 responses to MetaBrainz’s discovery requests:

- 14 1. Defendant: Plaintiff has objected to all of MetaBrainz’s discovery
15 requests on attorney-client privilege and/or work-product grounds and has
16 confirmed that certain documents are being withheld on such objections.
17 MetaBrainz has therefore requested a privilege log identifying each such
18 withheld documents and their related information (subject, date, author,
19 recipient, etc.). However, MetaBrainz does not seek a privilege log for
20 documents created after the filing of suit. Plaintiff: Plaintiff has offered to
21 provide a “categorical” privilege log to identify pre-suit communications
22 between Mr. Philpot and his litigation counsel in this suit, and between
23 Mr. Philpot and his prior counsel who sent a cease and desist letter to
24 Defendant, including who participated in the communications, and the date
25 range thereof. Mr. Philpot is not aware of any other privileged
26 communications that relate to Defendant MetaBrainz or this lawsuit, but is
27 willing to log them if located. Mr. Philpot objects to creating a log of his
28

1 communications with counsel in unrelated litigations that do not relate to
2 MetaBrainz or this suit.

- 3 2. Defendant: MetaBrainz has requested information and documents
4 concerning Plaintiff's alleged status as a "professional photographer," his
5 alleged ability to produce "well-known," "sought-after," or "highly
6 popular" photographs, *see* Dkt. No. 1 ¶1; *see also* Dkt. No. 28 at 1, and
7 Plaintiff's alleged damages, which Plaintiff claims to include "lost
8 prospective contracts, licensing opportunities, and business referrals." *See*,
9 *e.g.*, Response to Interrogatory No. 7. MetaBrainz believes documents
10 pertaining to Plaintiff's income, such as tax returns and bank account
11 information for the pertinent time period that would reflect Plaintiff's
12 revenue and the sources thereof, are relevant. Plaintiff: Plaintiff has
13 offered to produce licenses and/or settlement agreements which set forth
14 all of the revenue Plaintiff has received concerning the ten photos at issue
15 in this lawsuit. Plaintiff has declined to produce his personal tax returns
16 and bank account information on the grounds that such production would
17 be unduly burdensome, invasive, and not proportional to the needs of this
18 case.
- 19 3. Defendant: MetaBrainz has requested all sworn statements made by
20 Plaintiff concerning his concert photography, such as affidavits,
21 depositions, and discovery responses supported by a verification. Plaintiff:
22 Plaintiff has offered to produce deposition transcripts and sworn
23 statements from other cases pertaining to the ten photographs at issue in
24 this case, to the extent Plaintiff has such documents in his possession or
25 they can be readily obtained from counsel in those other cases.
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Respectfully submitted,

Dated: February 14, 2019

By: /s/ Edward A. Cavazos
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Dated: February 14, 2019

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Pursuant to Civil L.R. 54-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.